

SEP 28 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NAHID QIDWAI,

Plaintiff - Appellant,

v.

PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant - Appellee.

No. 03-56946

D.C. No. CV-00-13300-RSWL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted September 15, 2005
Pasadena, California

Before: FARRIS, THOMPSON, and BYBEE, Circuit Judges.

Whether an individual is totally disabled within the meaning of an ERISA policy is essentially a factual question, subject to a clearly erroneous standard of review. *Deegan v. Cont'l Cas. Co.*, 167 F.3d 502, 508 (9th Cir. 1999). Under

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Qidwai's insurance policy, the district court was required to determine whether petitioner was (1) unable to perform, for wage or profit, the material and substantial duties of both (a) her occupation and (b) any job for which she was reasonably qualified by her education, training or experience; (2) unable to work at any job for wage or profit; and (3) under the regular care of a doctor. Following careful review of the record, we are satisfied that the district court properly considered all opposing evidence before rejecting one view in favor of the other. There is no error. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

AFFIRMED.